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**DHSC, LLC d/b/a Affinity Medical Center, Community Health Systems, Inc., and/or Community Health Systems Professional Services Corporation, LLC, a single or joint employers and National Nurses Organizing National Nurses Organizing Committee (NNOC)**

**DHSC, LLC d/b/a Affinity Medical Center, Community Health Systems, Inc., and/or Community Health Systems Professional Services Corporation, LLC, a single or joint employers and California Nurses Association/National Nurses Organizing Committee (CNA/NNOC)**

**Hospital of Barstow Inc., d/b/a Barstow Community Hospital, Community Health Systems, Inc., and/or Community Health Systems Professional Services Corporation, LLC, a single or joint employers and California Nurses Association/National Nurses Organizing Committee (CNA/NNOC)**

**Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, Community Health Systems, Inc. and/or Community Health Systems Professional Services Corporation, LLC, a single employer and/or Joint Employers and National Nurses Organizing Committee(NNOC)**

**Fallbrook Hospital Corporation d/b/a Fallbrook Hospital, Community Health Systems, Inc., and/or Community Health Systems Professional Services Corporation, LLC, a single employer and/or joint employers and California Nurses Association/ National Nurses Organizing Committee (CNA/NNOC), AFL-CIO**

**Greenbrier, VMC, LLC d/b/a Greenbrier Valley Medical Center, Community Health Systems, Inc., and/or Community Health Systems Professional Services Corporation, LLC, a single employer and/or joint employers and National Nurses Organizing Committee (NNOC), AFL-CIO.**

**Watsonville Hospital Corporation d/b/a Watsonville Community Hospital, Community Health Systems, Inc., and/or Community Health Systems**

**Professional Services Corporation, LLC, a single employer and/or joint employers and California Nurses Association (CNA), National Nurses United.** Cases 08-CA-117890, 08-CA-124398, 08-CA-131772, 08-CA-144212, 08-CA-153759, 08-CA-166039, 08-CA-130717, 31-CA-116300, 31-CA-119831, 31-CA-124540, 31-CA-133880, 31-CA-153504, 10-CA-094403, 10-CA-110743, 10-CA-112255, 10-CA-11624621-CA-121480, 21-CA-124295, 21-CA-134774, 10-CA-117698, 10-CA-121156, 10-CA-126416, 10-CA-124354, 32-CA-120642, 32-CA-124332

August 10, 2016

ORDER<sup>1</sup>

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA  
AND MCFERRAN

The General Counsel's request for special permission to appeal from the administrative law judge's May 2, 2016 Order denying the General Counsel's motions to consolidate three additional complaints with this consolidated proceeding is granted. On the merits, the General Counsel's appeal is denied.

The three complaints that are the subject of the General Counsel's motions include: (1) a February 29, 2016 complaint in Case 08-CA-167313, against Respondents DHSC, LLC, d/b/a Affinity Medical Center (Affinity), Community Health Systems, Inc. (CHSI), Hospital of Barstow Inc., d/b/a Barstow Community Hospital (Barstow), Watsonville Hospital Corp. d/b/a Watsonville Community Hospital (Watsonville), and Community Health Systems Professional Services Corp., LLC (CHSPSC); (2) a March 10, 2016 consolidated complaint in Cases 10-CA-167330 and 10-CA-168085, against Respondents Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center (Greenbrier), CHSI, and CHSPSC, and against Bluefield Hospital Co., LLC d/b/a Bluefield Regional Medical Center (Bluefield), CHSI, and CHSPSC, respectively; and (3) an April 8, 2016 complaint in Case 31-CA-167522, against Respondents Barstow, CHSI, and CHSPSC.<sup>2</sup> The General Counsel orally moved to consolidate each new complaint as it issued, after the first phase of the hearing opened in the present consolidated proceeding.

Although the Board generally favors the consolidation of closely related allegations concerning the same parties

<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> Affinity, Barstow, Watsonville, Bluefield, and Greenbrier are collectively referred to as "the Hospitals."

where practicable,<sup>3</sup> we find that the judge did not abuse her discretion in denying the General Counsel's motions to consolidate here. The judge properly considered various relevant factors in her Order, including the complexity and magnitude of the ongoing consolidated proceeding, the relationship between the current and new allegations, the likelihood of delay if consolidation was granted, the risk that matters litigated would have to be relitigated in a second proceeding, and the potential for conserving resources if the cases were consolidated. We find that the judge reasonably determined, among other things, that the allegations of the new complaints were not sufficiently intertwined with those of the highly complex 118-page amended consolidated complaint to require consolidation, that they could be effectively litigated separately, and that consolidation would cause significant delay in the ongoing proceeding.

The Hospitals argued to the judge that because the charges on which the additional complaints are based were filed before the issuance of the amended consolidated complaint and the opening of the hearing, the new complaints are litigation-barred in accordance with *Jefferson Chemical Co.*, 200 NLRB 992 (1972), and *Peyton Packing*, supra. The Hospitals contend, citing *Highland Yarn Mills*, 310 NLRB 644, 644 (1993), vacated 315 NLRB 1169 (1994), that

the General Counsel may not litigate an unfair labor practice allegation predicated on events which the General Counsel knew or should have known about when issuing an earlier complaint or at the time of trial in that earlier complaint, if that allegation is of the same general nature as, or is related to, an allegation in an earlier complaint.

<sup>3</sup> See *Service Employees Local 87 (Cresleigh Mgmt. Inc.)*, 324 NLRB 774 (1997), citing *Peyton Packing Co.*, 129 NLRB 1358 (1961).

The Hospitals assert that the allegations of the three new complaints are "of the same general nature" as those in the amended consolidated complaint, and that, having been omitted from that complaint, they may not be tried in this or a subsequent proceeding.<sup>4</sup>

The judge did not rule on this argument because she found that, by denying the General Counsel's motions to consolidate, she had no jurisdiction over the three new complaints. Since it was not necessary for the judge to reach this argument in order to rule on the motions, we find that she did not abuse her discretion by denying the General Counsel's motions to consolidate and by declining to rule on the Hospitals' contention that the new complaints are litigation-barred.

Accordingly, we deny the General Counsel's appeal.

Dated, Washington, D.C. August 10, 2016

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Mark Gaston Pearce, Chairman

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Kent Y. Hirozawa, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>4</sup> Based on their view that the allegations of the three new complaints are litigation-barred, the Hospitals also moved for summary judgment dismissing the complaints. In a separate Order issued this day in *DHSC, d/b/a Affinity Medical Center et al.*, Cases 08-CA-167313 et al., we deny the Hospitals' motion.